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ABSTRACT

This document presents a detailed explanation of Section 504 of the Rehabilitation Act of 1973 and its procedural requirements; sample procedural documents; highlights of the major differences among Section 504, the Americans with Disabilities Act (ADA), and the Individuals with Disabilities Education Act (IDEA); a flow chart of the accommodation process; sample accommodation plans; and suggestions for working with the U.S. Department of Education's Office of Civil Rights. Individual sections address definitions under Section 504, school district obligations for elementary and secondary education, and procedural requirements of Section 504. A tabular format compares major components of Section 504 to the IDEA and the ADA. Components compared include: purpose, who is protected, duty to provide a free appropriate public education, special education versus regular education, funding, procedural safeguards, evaluations, placement procedures, grievance procedures, due process, enforcement, prohibition of discrimination, notice requirements, reasonable accommodation, information on access, auxiliary aids, and discrimination on basis of association. Appendices include a wide variety of sample forms and policies complying with the law. (DB)

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This material is available in alternative format upon request.

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Introduction

With the passage of the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act of 1973 is receiving more and more attention. A recent joint memorandum from the U.S. Department of Education and the Office for Civil Rights regarding the eligibility of students with attention deficit disorders reiterated the requirements of Section 504 and the Individuals with Disabilities Education Act (IDEA). Many questions have arisen regarding the relationship between the ADA, Section 504, and the IDEA. Special education administrators have requested the Office of Superintendent of Public Instruction (OSPI) to provide technical assistance to school districts to assure compliance with these statutes.

To address these issues, OSPI has developed this document, in cooperation with Region 10 of the Office for Civil Rights, to assist school districts in serving all of their students with disabilities in a way that assures a quality education which is in compliance with state and federal laws. This document includes a detailed explanation of Section 504, and its procedural requirements, sample procedural documents, highlights of the major differences between Section 504, the ADA, and the IDEA, a flow chart for implementation, sample accommodation plans, and suggestions for working with the Office for Civil Rights.

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SECTION 504 OF THE REHABILITATION ACT

Section 504 of the Rehabilitation Act of 1973 is a civil rights statute which provides that: "No otherwise qualified individual with disabilities in the United States . . . shall, solely by reason of his/her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance or activity conducted by any executive agency or by the United States Postal Service." 29 U.S.C. 794.

Definitions

Who is an "individual with disabilities?"

An individual with disabilities is the same as "a person with disabilities" defined in 34 CFR 104.3(j). That definition is as follows:

> (j)"Person with disabilities." (1) "Persons with a disability" means any person who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.

The legal definition contained in Section 504 does not set forth a list of specific diseases and conditions that constitute physical or mental impairment because of the difficulty of ensuring the comprehensiveness of such a list. However, the definition includes such diseases and conditions as orthopedic, visual, speech, and hearing impairments; cerebral palsy; epilepsy; muscular dystrophy; multiple sclerosis; cancer; heart disease; diabetes; mental retardation; emotional illness; attention deficit disorder (ADD); attention deficit hyperactive disorder (ADHD); acquired immune deficiency syndrome (AIDS); and human immuno deficiency virus (HIV) positive.

There are three criteria used to qualify a person as an individual with disabilities under the regulations.

1. A person is considered disabled under Section 504 if she/he has a physical or mental impairment which substantially limits one or more major life activities (e.g., any student who is eligible to receive services under the Individuals with Disabilities Education Act). A physical or mental impairment does not constitute a disability for purposes of this part of the definition unless its severity is such that it results in a substantial limitation of one or more life activities. Thus, cultural, environmental, or economic factors; age; and homosexuality are not covered. However, if a person who has any of these characteristics also has a physical or mental disability, the person is included in the definition.

2. A person is considered disabled under Section 504 if she/he has a record or history of such an impairment (e.g., a student with learning disabilities who has been dismissed from the special program for students with learning disabilities, a student identified/diagnosed as having an attention deficit disorder, a student who has cancer, a student in recovery), has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activity. An example of misclassification is a limited English proficient student who is mistakenly determined eligible for the special program for students with a mental disability.

3. A person is considered disabled under Section 504 if she/he is regarded as having such an impairment. A person can be found eligible under this section if he/she:

   a. has a physical or mental impairment that does not substantially limit a major life activity but is treated by the district as having such a limitation (e.g., a student who has scarring, a student who walks with a limp); or

   b. has a physical or mental impairment that substantially limits a major life activity only as a result of the attitudes of others toward such impairment (e.g., a student who has epilepsy and is not allowed to try out for sports or cheerleading); or

   c. has no physical or mental impairment but is treated by the district as having such an impairment (e.g., a student who tests positive for HIV but has no physical effects from it).

Who is a "qualified" individual with disabilities?

With respect to preschool elementary, secondary, and adult education services, a person with a disability of an age during which persons with disabilities are provided such services, of any age during which it is mandatory under state law to provide such services to persons with disabilities, or to whom a state is required to provide a free appropriate education under Section 612 of the Individuals with Disabilities Education Act, is qualified. 34 CFR 104.3(k) For school districts, this means all school-age persons with disabilities, ages 3-21.

Parents who have a disabling condition are also protected by Section 504. For example, a district should provide an interpreter or some equivalent service to a parent who is deaf in order to ensure that the parent has an equal opportunity to participate in school initiated activities.

What is a "program or activity?"

The term includes all programs or activities of OSPI and of all school districts.

What is a "major life activity?"

Major life activities, under Section 504, includes caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. The disabling condition need only substantially limit **one** major life activity in order for the student to be eligible. 34 CFR 104.3(j).

What constitutes discrimination under Section 504?

Discrimination under Section 504 34 CFR 104.4(b) occurs when a recipient of federal funds:

1. denies a student with a disability the opportunity to participate in or benefit from an aid, benefit, or service which is afforded nondisabled students (e.g., district practice of refusing to allow any student with an individual educational plan (IEP) the opportunity to be on the honor roll, denial of credit to a student whose absenteeism is related to his/her disabling condition, expelling a student for behavior related to his/her disabling condition, refusing to dispense medication to a student who could not attend school otherwise);

2. fails to afford the student with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is equal to that afforded others (e.g., applying a policy that conditions interscholastic sports eligibility on the student's receiving passing grades in five subjects without regard to the student's disabling condition);

3. fails to provide aids, benefits, or services to a student with a disability that are as effective* as those provided to a nondisabled student (e.g., placing a student with a hearing impairment in the front row as opposed to providing her with an interpreter);

4. provides different or separate aids, benefits, or services than are provided to nondisabled students (e.g., segregating students in separate classes, schools, or facilities, unless necessary);

5. aids or perpetuates discrimination by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability (e.g., sponsoring a student organization that excludes persons with disabilities);

6. denies a person with disabilities the opportunity to participate as a member of a planning or advisory board strictly because of his/her disabling condition;

7. otherwise limits the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others (e.g., prohibiting a person with a physical disability from using a service dog at school);

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8. in determining the site or location of a facility, makes selections which effectively exclude persons with disabilities, denies them benefits, or otherwise subjects them to discrimination (e.g., allowing students with disabilities to be located in inferior facilities, such as trailers, wings in basements, and unnecessarily restrictive classrooms due to a lack of classroom space).

It should be noted that the requirements under Section 504 are essentially the same as those under the Washington State Law Against Discrimination and are consistent with the ADA, although the ADA has a broader coverage.

*** Note: "Equally effective" means equivalent, as opposed to identical. Moreover, to be equally effective an aid, benefit, or service need not produce equal results; it must merely afford an equal opportunity to achieve equal results.**

SCHOOL DISTRICT OBLIGATIONS FOR ELEMENTARY AND SECONDARY EDUCATION

Educational Setting

Districts must educate students with disabilities with nondisabled students to the maximum extent appropriate to the needs of the students with disabilities. In order to remove a student from the regular educational environment, the district must demonstrate that educating the student in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. 34 CFR 104.34.

Free Appropriate Education

Districts must provide a free appropriate education (regular or special education and related aids and services) to Section 504 disabled school-age children who reside within the district. Instruction must be individually designed to meet the needs of these students as adequately as the needs of nondisabled students are met.

Note: The Section 504 standard of what is appropriate differs from the IDEA "appropriate" standard which requires the district to design a program reasonably calculated to confer educational benefit. Section 504 requires that persons with disabilities be provided aids, benefits, or services that are as effective as those provided nondisabled persons.

Section 504 does not require school districts to develop an individual educational plan (IEP). However, the district should document what evaluations were performed and/or decisions were made regarding each student considered under Section 504.

The quality of educational services provided to students with disabilities must be equivalent to the services provided to nondisabled students. Teachers must be trained in the instruction of persons with the disability in question and appropriate materials and equipment must be available. 34 CFR 104, Appendix A, paragraph 23.

Note: A child does not have to need special education in order to be qualified under Section 504. 34 CFR 104.33(a)(b).

Transportation

If a district places a student in a program not operated by the district, the district must assure that adequate transportation to and from the program is provided at no greater cost than the parent would have paid to transport the child to the district-operated program. 34 CFR 104.33(c)(2).

If a district provides transportation to all its students within a certain geographic area, the district may not discriminate in its provision of transportation to students with disabilities.

If a district proposes to terminate a qualified student's bus transportation for inappropriate bus behavior, the district must first determine the relationship between the student's behavior and his/her disabling condition and provide the parent with notice of his/her rights. If the behavior is related to the disabling condition, the district may not terminate services, but must provide an alternative mode of transportation.

Note: The length of the bus ride for students with disabilities should not be longer than that of nondisabled students.

Residential Placement

Residential placement must be provided at no cost to the parent only if necessary to provide a free appropriate education. 34 CFR 104.33(c)(3).

Nonpublic School Placements Made by Parents

If the district has made available a free appropriate education to a student which conforms to the requirements of Section 504, but the parent chooses to place the child elsewhere, the district is not responsible for any costs incurred. 34 CFR 104.33(c)(4).

Evaluations

If a student with a disability needs or is believed to need special education or related services, the district must evaluate the student prior to initial placement in a "regular or special education program and any subsequent significant change in placement." 34 CFR 104.35(a). A full evaluation is not required when neither the district nor the parent believes that the child with a disability is in need of special education or related services.

The district must establish policies and procedures for evaluation and placement which assure that tests and other evaluation materials:

1. have been validated and are administered by trained personnel;

2. are tailored to assess educational need and are not based solely on IQ scores; and

3. reflect aptitude or achievement or whatever else the tests purport to measure and do not reflect the student's impaired sensory, manual, or speaking skills (unless the test is designed to measure these particular deficits). 34 CFR 104.35(b).

Note: There is no right to an independent evaluation under Section 504.

Placement Procedures

In interpreting evaluation data and making placement decisions, the district must:

1. draw upon information from a variety of sources;

2. ensure that all information is documented and considered;

3. ensure that the placement decision is made by a group of persons including those who are knowledgeable about the child, the meaning of the evaluation data, and placement options; and

4. ensure that the student is educated with his/her nondisabled peers to the extent appropriate, and that any facilities identifiable as being for persons with disabilities are comparable to facilities provided other students. 34 CFR 104.35(c).

Re-evaluations

Section 504 requires "periodic" re-evaluations. There is no specified time frame. However, school districts will be in compliance if they re-evaluate the student every three years. Additionally, Section 504 requires a re-evaluation before any significant change in placement. 34 CFR 104.35(d).

Examples of significant changes in placement which require re-evaluation include:

- expulsion
- single suspensions which exceed ten consecutive calendar days
- transfer of a student to home instruction
- graduation from high school
- significant change in the amount or type of education (e.g., changing the student from one period to three periods a day in the resource room or moving the student from full-time regular education to part-day resource room)

Note: A re-evaluation consistent with the IDEA is one means of meeting this requirement.

Nonacademic Services

Districts must provide equal opportunity in areas such as counseling, physical recreational athletics, transportation, health services, recreational activities, special interest groups or clubs, referrals to other agencies, and employment. 34 CFR 104.37.

1. Counseling: Districts may not counsel students with disabling conditions toward more restrictive career objectives. 34 CFR 104.37(b).

2. Physical education and athletics: A district must provide equal opportunity for students with disabilities to participate. A district may offer these activities separately for students with disabilities only if necessary. The district may not deny a student with a disability the opportunity to compete in activities which are not separate. 34 CFR 104.37(c).

PROCEDURAL REQUIREMENTS OF SECTION 504

To be in compliance with Section 504, school districts must provide for public notification of their policies of nondiscrimination and of their grievance procedures, and they must publicly identify the person who coordinates compliance. Specifically, districts must do the following:

1. provide written assurance of nondiscrimination. 34 CFR 104.5(a).

Note: This assurance form is provided by the federal government and districts have made such assurance since 1977.

2. designate an employee to coordinate compliance with Section 504. 34 CFR 104.7(a).

3. adopt grievance procedures to resolve complaints of discrimination. 34 CFR 104.7(b).

4. provide notice to students, parents, employees, unions, and professional organizations of nondiscrimination in admission or access to, or treatment or employment in, its programs or activities. Notice must also specify the responsible employee designated to coordinate compliance. 34 CFR 104.8.

Note: The student/teacher handbook and the Annual Report are two methods for making initial and continued notification.

5. annually identify and locate all Section 504 qualified children with disabilities in the district's geographic area who are not receiving a public education. 34 CFR 104.32(a).

6. annually notify persons with disabilities and their parents or guardians of the district's responsibility under Section 504. 34 CFR 104.32(b).

7. provide parents or guardians with procedural safeguards: 34 CFR 104.36.

   a. notice of their rights

   b. an opportunity to review relevant records

   c. an impartial hearing with opportunity for participation by parents or guardians and representation by counsel

   d. a review procedure

Persons disagreeing with the identification, evaluation, and placement of their child have several options open to them, including (1) filing a complaint or grievance through the district's Section 504 grievance procedure, (2) requesting a Section 504 due process hearing before an impartial hearing officer, (3) filing a complaint with the Office for Civil Rights (OCR), (4) and/or filing suit in Federal Court.

A district's grievance procedure should include the following: (1) a definition of what constitutes a grievance, (2) time limits between the incident and filing, (3) timelines governing each step, (4) a description of how a grievance is initiated (e.g., oral, written narrative, standard form), (5) where and with whom the grievance is to be filed (an alternative first person contact should be included to ensure that the grievance does not have to confront the person believed to be discriminating), (6) a description of the forum for the grievance process (e.g., fact-finding committee, investigative committee, equity specialist), and (7) specify the appeal process and final decision maker--who informs all parties of the decision, but must not imply that other sources of redress cannot be pursued.

The bottom line requirement for providing safeguards for students who district staff suspect have a disability under Section 504 but not under the IDEA is that qualified persons evaluate the student to determine whether the student does have a disability under Section 504. If the student has a disability under Section 504, placement decisions and provisions of needed aids and services must be made by persons who are knowledgeable of disability conditions and program options.

IDEA AND SECTION 504
A COMPARISON

COMPONENT	IDEA	SECTION 504
PURPOSE	To provide federal financial assistance to state and local education agencies to assist them to educate children with disabilities.	To eliminate discrimination on the basis of disability in all programs and activities receiving federal financial assistance.
WHO IS PROTECTED?	All school-age children who fall within one or more of 13 specific categories of disability and who, because of such disability, need special education and related services (i.e., mentally retarded, hard of hearing, speech or language impaired, visually impaired, seriously emotionally disturbed, orthopedically impaired, other health impaired, deaf, deaf-blind, multiple disabled, specific learning disabled, autistic, or traumatic brain injured).	All school-age children who have a physical or mental impairment which substantially limits a major life activity, have a record of such an impairment or are regarded as having such an impairment. Major life activities include walking, seeing, hearing, speaking, breathing, learning, working, caring for oneself and performing manual tasks. Section 504 protects a broader group of students than does the IDEA.
DUTY TO PROVIDE A FREE AND APPROPRIATE PUBLIC EDUCATION (FAPE)	Both laws require the provision of FAPE. Section 504 defines FAPE more broadly then does the IDEA.	
	Requires that FAPE be provided to only those protected students who, because of disability, need special education or related services.	Requires that FAPE be provided to only those protected students who, because of disability, need regular education accommodations, special education or related services.
	Defines FAPE as special education and related services. A student can receive related services under the IDEA if and only if the student is provided special education and needs related services to benefit from special education.	Defines FAPE as regular or special education and related aids and services. A student can receive related services under Section 504 even if the student is in regular education full-time and is not provided any special education.
	Requires a written IEP document with specific content and a required number of specific participants at the IEP meeting.	Does not require a written IEP document, but does require a plan. It is recommended the district document that a group of persons knowledgeable about the student convened and specified the agreed upon plan of services.

COMPONENT	IDEA	SECTION 504
SPECIAL EDUCATION VS. REGULAR EDUCATION	A student is protected by the IDEA, if and only if, because of disability, the student needs special education.	A student is protected by Section 504 regardless of whether the student needs special education. Some students protected by Section 504 are in regular education full-time and are not provided any special education.
FUNDING	Provides additional funding for protected students.	Does not provide additional funds. IDEA funds may not be used to serve students protected only under Section 504.
PROCEDURAL SAFEGUARDS	Both laws require prior notice to parents or guardians with respect to the identification, evaluation and/or placement of protected students. IDEA procedures will suffice for Section 504 implementation.	
	Requires written notice and specific content to be included in the notice.	Does not require written notice, but a district would be wise to do so.
	Requires written notice prior to any change in placement.	Requires notice prior to any "significant change" in placement.
EVALUATIONS	Both laws require that tests and other evaluation materials: a. Be validated for the specific purpose for which they are used; b. Be administered by trained personnel in conformance with the instructions provided by their producer; c. Include those tailored to assess specific areas of educational need; and d. Be selected and administered to assure that the test results accurately reflect whatever factors the tests purport to measure.	
	Requires informed consent before an initial evaluation is conducted.	Same as IDEA.
	Requires re-evaluations to be conducted at least every 3 years.	Requires periodic re-evaluations. IDEA schedule for re-evaluation will suffice.

COMPONENT	IDEA	SECTION 504
	A re-evaluation is not required before a change of placement. However, an IEP team should review current evaluation data, including progress towards goals and objectives when considering a significant change of placement. When data are insufficient to answer questions regarding the appropriateness of the special education and related services being considered, then a re-evaluation is required.	Requires re-evaluation before a significant change in placement.
	Provides for independent educational evaluation at district expense if parent disagrees with evaluation obtained by school and hearing officer concurs.	No provision for independent evaluations at district expense. However, a district must carefully consider any such evaluations presented.
PLACEMENT PROCEDURES	When interpreting evaluation data and making placement decisions, both laws require districts to: a. Draw upon information from a variety of sources; b. Assure that all information is documented and considered; c. Ensure that the eligibility decision is made by a group of persons including those who are knowledgeable about the child, the meaning of the evaluation data and placement options; and d. Ensure that the student is educated with his/her nonhandicapped peers to the maximum extent appropriate (least restrictive environment).	
	An IEP meeting is required before any change in placement.	A re-evaluation meeting is required before any "significant change" in placement.
GRIEVANCE PROCEDURE	Does not require a grievance procedure, nor a compliance officer.	Requires districts with more than 15 employees to, (1) designate an employee to be responsible for assuring district compliance with Section 504, and (2) provide a grievance procedure for parents, students and employees.
DUE PROCESS	Both statutes require districts to provide impartial hearings for parents or guardians who disagree with the identification, evaluation or placement of a student.	
	Contains detailed hearing rights and requirements.	Requires notice, the right to inspect records, the right to participate in a hearing and to be represented by counsel, and a review procedure.

COMPONENT	IDEA	SECTION 504
EXHAUSTION	Requires the parent or guardian to pursue administrative hearing before seeking redress in the courts.	Administrative hearing not required prior to OCR involvement or court action; compensatory damages possible.
ENFORCEMENT	Enforced by the U.S. Office of Special Education Programs. Compliance is monitored by OSPI and the Office of Special Education Programs.	Enforced by the U.S. Office for Civil Rights.
	OSPI resolves complaints.	OSPI has no monitoring, complaint resolution or funding involvement.

Section 504 and ADA
A Comparison

COMPONENT	Section 504 Regulation	ADA Title II Regulation	Significant Differences Between Section 504 and Title II
DISCRIMINATION PROHIBITED	34.CFR 104.4	28 CFR 35.130	Minor differences in the application of various subsections; some areas are codified in the ADA, but not in Section 504; however, Section 504 uses case law to come to same conclusion.
SELF-EVALUATION	34 CFR 104.6(c)	28 CFR 35.105	Both regulations require self-evaluation to determine compliance. Unlike Section 504, Title II does not require remedial steps to eliminate effects of discrimination. Report must be available for public inspection if 15+ employees (Section 504) or 50+ (Title II).
DESIGNATED EMPLOYEE/ GRIEVANCE PROCEDURES	34 CFR 104.7	28 CFR 35.107	Section 504 requires if 15 or more employees; Title II = 50. Title II omits provision exempting applicants for employment or admission.
NOTICE REQUIREMENT	34 CFR 104.8	28 CFR 35.106	Section 504 requires notice if 15 or more employees; Title II = 50. Title II requires the notice to contain information on ADA.
FAPE	34 CFR 104.33 (a)(b)	28 CFR 35.130 (general nondisc. provision)	Title II has no separate coverage for educational programs covered under Subpart D of Section 504; uses general nondiscrimination provision.
		28 CFR 35.135	This section of Title II does not require provision of personal services, i.e., wheelchairs, toileting, etc. (limitation on auxiliary aids), but does not lessen Section 504 requirement to provide necessary services to ensure FAPE.
RETALIATION	34 CFR 100.7(e) 34 CFR 104.61	28 CFR 35.102 28 CFR 35.134	This portion of Title II also applies to private entities; applies also to one who aids another in exercising rights.
REASONABLE ACCOM-MODATION	34 CFR 104.12	28 CFR 35.160	Regulations are generally consistent.
INFORMATION ON ACCESS	34 CFR 104.22(f)	28 CFR 35.163	Title II requires signage; Section 504 only requires procedures to obtain information.

AUXILIARY AIDS	34 CFR 104.44	28 CFR 35.160	Title II requires primary consideration to request of individual to determine what aid is necessary; request must be honored unless demonstrated that another effective means or undue burden. Title II requires communication access that is equally effective as that provided to people without disabilities.
DISCRIMINATION ON BASIS OF ASSOCIATION	No Section 504 Provision	28 CFR 35.130(g)	Title II prohibits discrimination on basis of relationship to or association with individual with disabilities. Title II creates independent right of action for nondisabled individual 34 CFR 100.7(e) is similar under Section 504.
TDD MACHINES	No Section 504 provision (but see 34 CFR 104.4(b))	28 CFR 35.161 28 CFR 35.162	If telephone contact with beneficiaries, a TDD or equally effective system is required.

SAMPLE
SECTION 504 POLICY STATEMENT

Appendix A

Local school districts may wish to review their existing "nondiscrimination policy" with particular emphasis on Subpart D of Section 504. In some instances, the existing policy may be sufficient. In other instances, districts may wish to revise existing policy or develop a separate statement concerning nondiscrimination in educational programs. At a minimum, a local school district policy should include:

- An affirmative statement that the district does not discriminate on the basis of handicap;
- Reference to Section 504 of the Rehabilitation Act of 1973; and
- Reference to a referral/evaluation/placement process for students suspected of having a disability under Section 504.

Sample Section 504 Policy Statements

Option A

The District will identify, evaluate and provide an appropriate public education to students who are disabled within the meaning of Section 504 of the Rehabilitation Act of 1973.

Option B

It is the policy of the Board of Education to provide a free and appropriate public education to each student with a disability within its jurisdiction, regardless of the nature or severity of the disability.

It is the intent of the district to ensure that students who are disabled within the definition of Section 504 of the Rehabilitation Act of 1973 are identified, evaluated and provided with appropriate educational services.

Option C

It is the policy of the Board of Education to provide a free and appropriate public education to each student with a disability within its jurisdiction, regardless of the nature or severity of the disability.

It is the intent of the district to ensure that students who are disabled within the definition of Section 504 of the Rehabilitation Act of 1973 are identified, evaluated and provided with appropriate educational services. Students may be disabled under this policy even though they do not require services pursuant to the Individuals with Disabilities Education Act (IDEA). Due process rights of students with disabilities and their parents under Section 504 will be enforced.
__(name of person)_____ is the coordinator of Section 504 activities.

SAMPLE
SECTION 504/TITLE II GRIEVANCE PROCEDURE

_____(recipient)_____ has adopted an internal grievance procedure providing for the prompt and equitable resolution of complaints alleging any action prohibited by Section 504 of the Rehabilitation Act of 1973 (Section 504) or Title II of the Americans with Disabilities Act (Title II). Both Section 504 and Title II prohibit discrimination on the basis of disability.

Complaints should be addressed to: ____(name, title, address, telephone number)____ who has been designated to coordinate Section 504/Title II compliance efforts.

1. A complaint must be filed in writing, contain the name and address of the person filing it, briefly describe the alleged discriminatory action, and identify the date the action occurred and the name(s) of the person(s) responsible.

2. A complaint must be filed within _____(number of days)_____ after the complainant becomes aware of the alleged discrimination. (Processing of allegations of discrimination which occurred before this grievance procedure was in place will be considered on a case-by-case basis.)

3. Unless the matter can be promptly resolved informally, an investigation will be conducted with respect to all timely filed complaints which raise issues under Section 504 and/or Title II. The investigation shall be conducted by ____(name of person)_____. These rules contemplate informal but thorough and impartial investigations, affording all interested persons and their representatives, if any, an opportunity to submit evidence relevant to a complaint.

4. A written determination as to the validity of the complaint and a description of the resolution, if any, shall be issued by ____(name of person)_____ and a copy forwarded to the complainant no later than _____(number of days)_____ after its filing.

5. The Section 504/Title II coordinator shall maintain the files and records of the _____(recipient)_____ relating to the complaints filed.

6. The complainant can request a reconsideration of the case in instances where he or she is dissatisfied with the resolution. The request for reconsideration should be made within ____(number of days)____ to ___(person responsible for handling appeals)____.

7. The right of a person to a prompt and equitable resolution of the complaint filed thereunder shall not be impaired by the person's pursuit of other remedies such as the filing of a Section 504 or Title II complaint with the responsible federal department or agency. Utilization of this grievance procedure is not a prerequisite to the pursuit of other remedies.

8. These rules shall be construed to protect the substantive rights of interested persons, to meet appropriate due process standards, and to assure that ___(name of recipient)____ complies with Section 504, Title II, and their implementing regulations.

SAMPLE

PROCEDURAL SAFEGUARDS/PARENT RIGHTS

There are several times during the planning process when parents/guardians should be provided their rights under Section 504:

1. When eligibility is determined.
2. When a plan is developed.
3. Before there is a significant change in the plan for services.

Notification should include the following rights under Section 504:

1. Right to file a grievance with the school district over an alleged violation of Section 504 regulations.
2. Right to have an evaluation that draws on information from a variety of sources.
3. Right to be informed of any proposed actions related to eligibility and plan for services.
4. Right to examine all relevant records.
5. Right to receive all information in the parent's/guardian's native language and primary mode of communication.
6. Right to periodic re-evaluations and an evaluation before any significant change in program/service modifications.
7. Right to an impartial hearing if there is disagreement with the school district's proposed action.
8. Right to be represented by counsel in the impartial hearing process.
9. Right to appeal the impartial hearing officer's decision.

Section 504 regulations do <u>not</u> establish timelines for submission of a hearing request.

Section 504 regulations do <u>not</u> define "impartial." However, in similar processes, impartial has been defined as a person not employed by or under contract with the district in any capacity.

Section 504 regulations do <u>not</u> require that the selection of the hearing officer be a mutually agreed upon decision between the school district and the parents/guardians.

SAMPLE

PARENT/STUDENT RIGHTS IN IDENTIFICATION EVALUATION AND PLACEMENT

Please Keep This Explanation for Future Reference

(Section 504 of the Rehabilitation Act of 1973)

The following is a description of the rights granted by federal law to students with disabilities. The intent of the law is to keep you fully informed concerning decisions about your child and to inform you of your rights if you disagree with any of these decisions.

You have the right to:

1. Have your child take part in, and receive benefits from public education programs without discrimination because of his/her disabling conditions.

2. Have the school district advise you of your rights under federal law.

3. Receive notice with respect to identification, evaluation, or placement of your child. Parent consent must be obtained before conducting an initial evaluation and placement.

4. Have your child receive a free appropriate public education. This includes the right to be educated with nondisabled students to the maximum extent appropriate. It also includes the right to have the school district make reasonable accommodations to allow your child an equal opportunity to participate in school and school-related activities.

5. Have your child educated in facilities and receive services comparable to those provided nondisabled students.

6. Have your child receive special education and related services if s/he is found to be eligible under the Individuals with Disabilities Education Act or Section 504 of the Rehabilitation Act.

7. Have evaluation, educational, and placement decisions based upon a variety of information sources, and by persons who know the student, the evaluation data, and placement options.

8. Have transportation provided to and from an alternative placement setting at no greater cost to you than would be incurred if the student were placed in a program operated by the district.

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9. Have your child be given an equal opportunity to participate in nonacademic and extracurricular activities offered by the district.

10. Examine all relevant records relating to decisions regarding your child's identification, evaluation, educational program, and placement.

11. Obtain copies of educational records at a reasonable cost unless the fee would effectively deny you access to the records.

12. A response from the school district to reasonable requests for explanations and interpretations of your child's records.

13. Request amendment of your child's educational records if there is reasonable cause to believe that they are inaccurate, misleading or otherwise in violation of the privacy rights of your child. If the school district refuses this request for amendment, it shall notify you within a reasonable time and advise you of the right to a hearing.

14. Request mediation or an impartial due process hearing related to decisions or actions regarding your child's identification, evaluation, educational program or placement. You and the student may take part in the hearing and have an attorney represent you. Hearing requests must be made to _____.

15. Ask for payment of reasonable attorney fees if you are successful on your claim.

16. File a local grievance.

The person in this district who is responsible for assuring that the district complies with Section 504 is _____(name of person)_____

Telephone Number _____

WHEN SCHOOL STAFF SHOULD CONSIDER THE EXISTENCE OF A DISABILITY AND POSSIBLE SECTION 504 PROTECTION

- When suspension or expulsion is being considered for any student.
- When retention is being considered for any student.
- When a student shows a pattern of not benefiting from the instruction being provided.
- When a student returns to school after a serious illness or injury.
- When a student is referred for evaluation but it is determined not to do an evaluation under the IDEA.
- When a student is evaluated and is found not to qualify for Special Education services under the IDEA.
- When a student exhibits a chronic health condition.
- When a student is identified as "at risk" or exhibits the potential for dropping out of school.
- When substance abuse is an issue.
- When a disability of any kind is suspected.
- When a new building or remodeling is being considered.

APPROPRIATE QUESTIONING SEQUENCE WHEN THE EXISTENCE OF A DISABLING CONDITION IS SUSPECTED

I. Is the student disabled under Section 504 of the Rehabilitation Act of 1973?

A. Definition of "disabled" under Section 504:

1. Is any person who has a physical or mental impairment which substantially limits one or more of such person's major life activities; or

2. has a record of such impairment; or

3. is regarded (perceived) as having such an impairment.

II. If the answer to the question in I above is "yes."

A. Does the student need (qualify for) special education services under the IDEA (formerly EHA or PL 94-142)?

B. What does the student need in order to be afforded access to a *free appropriate public education (FAPE)?*

C. What is the appropriate placement for the provision of services chosen after consideration of the full continuum of placement options?

1. If the appropriate placement is regular education, what interventions or adaptations are needed?

2. If the appropriate placement is special education, what is the *least restrictive environment (LRE).*

III. If the answer to the question in I above is "no."

A. Maintain documentation about the decision that includes the following:

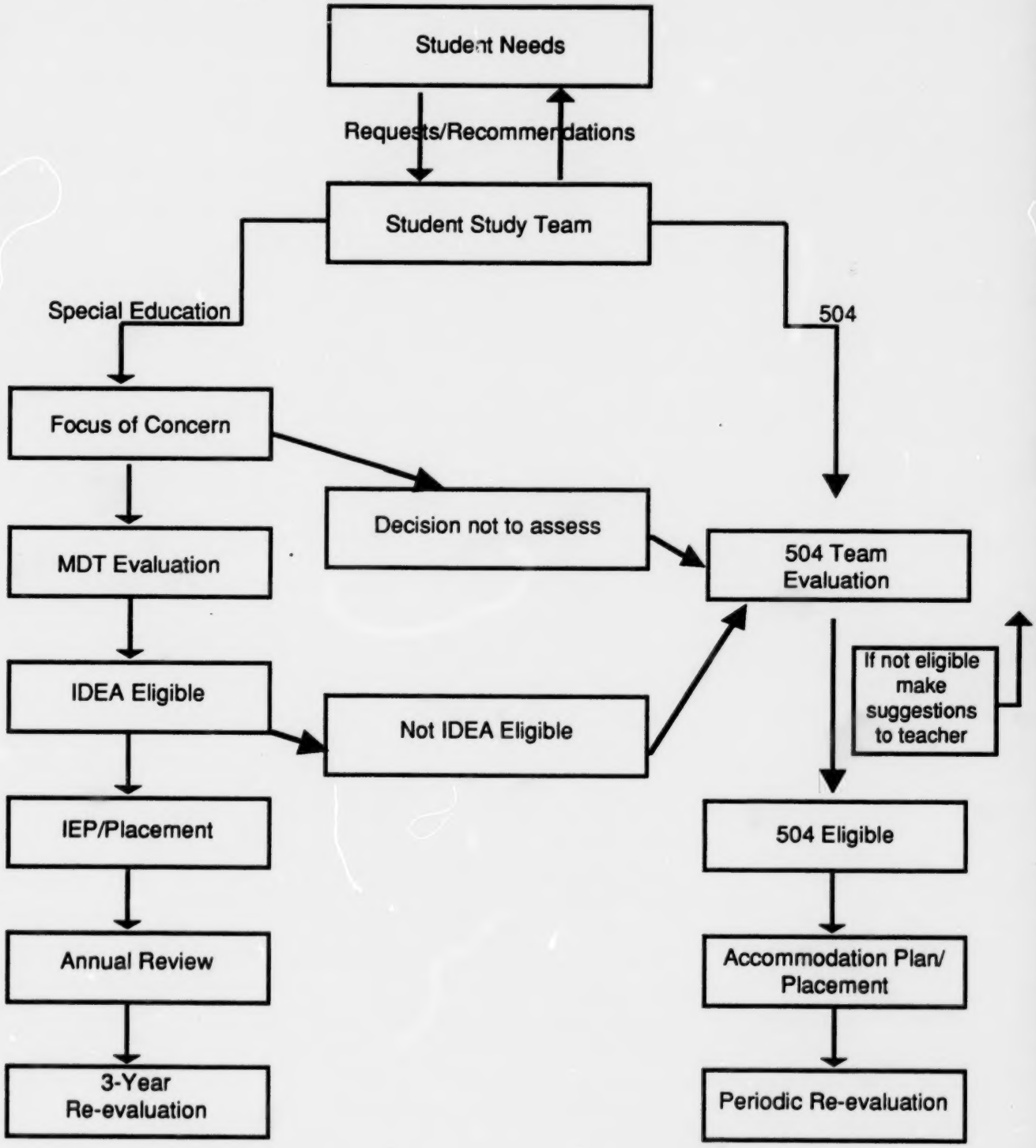
1. The identity of the persons involved in the group that made the decision which reflects that they were knowledgeable about the child.

2. The evaluation data that was used to make the decision with any interpretations that might be required.

3. Placement options that were considered.

B. Provide *written notice* of the decision to the parent(s) which must include a complete statement of the parents' and student's rights under the IDEA and Section 504.

Section 504 ACCOMMODATION/IDEA Process



SAMPLE
PROCEDURES FOR SERVING STUDENTS WITH DISABILITIES UNDER SECTION 504, REHABILITATION ACT OF 1973

Step	Description of Activity
1. CONCERN	Student, parent, teacher, counselor, or administrator believe they are observing in a student substantially limited performance in one or more major life activities (i.e., in school generally academic effort and performance) that is believed to be caused by a physical or mental impairment.
2. REFERRAL	The concerned individual should complete the Referral Form and give it to the designated building team.
3. SCREENING	The designated building team reviews the referral, completes an appropriate student files review, and consults with teachers, parent/guardians, peers, professionals, and/or the student. DECISION TO BE MADE: DOES THIS STUDENT APPEAR TO HAVE A DISABILITY UNDER SECTION 504? If yes: • Provide the parent/guardian with a copy of the Section 504 rights. • If further information is needed, provide notice to parents for evaluation and obtain their consent in writing. Also obtain written consent for a mutual exchange of information from parent/guardian as appropriate. If no: • Provide screening results to source of referral with accompanying recommendations. • Provide written notice to parents that student does not qualify.

Procedures for Serving Students with Disabilities Under Section 504, Rehabilitation Act of 1973 - Continued

4. EVALUATION

Conduct all evaluation deemed appropriate and for which the parent/guardian have given written permission.

5. ELIGIBILITY

A Section 504 MDT is recommended to be composed of one of the student's teachers (and/or the student's counselor), a building administrator, and persons knowledgeable about the student's disability and the meaning of the evaluation data and service options. The MDT convenes to review all evaluation results, determine eligibility as a student with a disability under Section 504, and document the meeting in writing. The team composition may vary according to the needs of the student.

If no: Consider other referral sources or options for the student and/or school. Provide written notice to parents that student doesn't qualify.

If yes: THE SECOND DECISION TO BE MADE:
Does the student also seem to have a disability under one of the IDEA conditions?
If yes: Refer to IDEA MDT for appropriate disposition.
If no: Proceed to step 6.

NOTE: Whatever the disposition of the case at step 5, the MDT should complete a written Section 504 eligibility statement.

6. DEVELOP ACCOMMODATION PLAN

Once eligibility under Section 504 has been determined, the process moves to the development of a student accommodation plan. This plan is to be developed by a professional team that may or may not be the same individuals who were involved at the ELIGIBILITY step 5, but a similar minimum team composition is recommended.

7. EDUCATIONAL SERVICES

The educational services are implemented as outlined in the student accommodation plan. One individual should be designated as the case manager to monitor the implementation of the plan and the progress of the student.

Procedures for Serving Students with Disabilities Under Section 504, Rehabilitation Act of 1973 - Continued

8. PERIODIC	Each student accommodation plan should be reviewed by the team periodically. Three issues which should be addressed at the review are as follows: (1) the need for additional evaluation information, (2) the continued eligibility as a student with a disability under Section 504, and (3) the contents of the plan and service provider.

NOTE: Due Process hearing or mediation requests must be made directly to the District 504 Compliance Officer. Districts are responsible for hearing officer and mediator expenses. OSPI encourages districts to first utilize mediation as a method to resolve disputes.

Sample provided by Kennewick School District #17.

SAMPLE

SECTION 504 DISABLED STUDENT NEEDS ASSESSMENT AND EDUCATION PLAN

Student Name: _____ Birthdate: _____ Age: _____

Grade: _____ Student #: _____ Phone Number(s): _____

Assessment Procedures Administered: _____

_____

Assessment results/Identified Needs:

_____

_____

Recommended Educational Plan - Accommodations:

Classroom:

_____ Provide a structured learning environment (allow the student to keep his/her desk removed from the other students, provide a written schedule and/or assignment sheet).
_____ Repeat and simplify instructions about in-class and homework assignments.
_____ Supplement important verbal instructions with visual instructions.
_____ Use behavioral management techniques, such as: _____
_____ Adjust class schedules.
_____ Modifying test delivery by: _____
_____ Give the student additional time to complete assignments.
_____ Use tape recorders, computer-aided instruction, or other audio-visual equipment.
_____ Select modified textbooks or workbooks.
_____ Tailor or adapt homework assignments.
_____ Use one-on-one peer tutorials.
_____ Classroom peer aides and peer note takers.
_____ Involvement of _____ to oversee implementation of these accommodations.
_____ Modification of nonacademic times such as lunchroom, recess, and physical education by:

_____

_____ (Other) _____

_____ (Other) _____

Student: _____

Parents: _____

Counselor: _____

Case Manager: _____

Plan Date: _____ Review Date: _____ Parent Notified Date: _____

SAMPLE
STUDENT ACCOMMODATION PLAN

NAME: _____ **BIRTHDATE:** _____ **GRADE:** _____

SCHOOL: _____ **DATE OF MEETING:** _____

1. Describe the nature of the concern:

_____

_____

_____

2. Describe the basis for the determination of disability (if any):

_____

_____

_____

3. Describe how the disability affects a major life activity:

_____

_____

_____

4. Describe the accommodations that are necessary:

_____

_____

_____

Review/Reassessment Date: _____
(must be completed)

Participants (Name and Title)

_____ _____
_____ _____
_____ _____
_____ _____

cc: Student's Cumulative File
Attachment: Information Regarding Section 504 of the Rehabilitation Act of 1973.

SAMPLE
SECTION 504 ACCOMMODATION PLAN

Student's Name: _____ Team Meeting Date: _____

Student Number: _____ Birthdate: _____

Section 504 Disability: _____

School: _____ Grade: _____

Present Level of Educational Performance:

Accommodations:

Environmental/Accessibility:

Instructional:

Behavioral/Social:

Discipline:

Placement Locations:

Placement Justification (LRE):

Implementation Date: Review Date:

Plan/Placement Team Participants:

Participant Signature	Role
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

CLASSROOM AND FACILITY ACCOMMODATIONS

As local districts develop policies and procedures for guiding the referral and identification of students determined to be disabled under Section 504, it is critical that information concerning this law and its impact on local school districts be shared with principals and building-level staff. The intent of Section 504 is to "accommodate" for differences within the regular education environment. For this to be accomplished, all staff must be provided with awareness activities and given specific information concerning the district's procedures for dealing with Section 504 referrals.

As individual students are identified, the classroom teacher may need specific training in the area of the identified disability (e.g., training from the school nurse on danger signs of an impending asthma attack, training from a physical therapist on correct positioning of a wheelchair-using student at his/her desk, etc.) The following classroom/facility accommodations are presented as examples of ways in which Section 504 disabilities may be successfully addressed within the regular education environment.

CLASSROOM AND FACILITY ACCOMMODATIONS

The following information provides examples of ways in which the needs of children with disabilities (or Section 504 disabilities) may be accommodated in the regular classroom environment.

AREA OF CONCERN	ACCOMMODATIONS
Parent/student/teacher communications	• Develop a daily/weekly journal. • Develop parent/student/school contacts. • Schedule periodic parent/teacher meetings. • Provide parents with duplicate sets of texts.
Staff communications	• Identify resource staff. • Network with other staff. • Schedule building team meetings. • Maintain ongoing communication with building principal.
School/community/agency communication	• Identify and communicate with appropriate personnel working with student. • Assist in agency referrals. • Provide appropriate carryover in the school environment.
Instructional day	• Allow student more time to pass in hallways. • Modify class schedule.
District policies/procedures	• Allow increase in number of excused absences for health reasons. • Adjust transportation/parking arrangements. • Approve early dismissal for service agency appointments.
Modification of classroom/building climate to accommodate student needs	• Use air purifier. • Control temperature. • Accommodate specific allergic reactions.
Modification of classroom/building to accommodate equipment needs	• Plan for evacuation for wheelchair-using students. • Schedule classes in accessible areas.
Building health/safety procedures	• Administer medication. • Apply universal precautions. • Accommodate special diets.
Difficulty sequencing and completing steps to accomplish specific tasks (e.g., writing a book report, term paper, organized paragraphs, division problems, etc.)	• Break up task into workable and obtainable steps. • Provide examples and specific steps to accomplish task.
Shifting from one uncompleted activity to another without closure	• Define the requirements of a completed activity (e.g., *Your math is finished when all 6 problems are complete and corrected; Do not begin on the next task until it is finished).*

AREA OF CONCERN	ACCOMMODATIONS
Difficulty following through on instructions from others	• Gain student's attention before giving directions. Use alerting cues. Accompany oral directions with written directions. Use alerting cues. Accompany oral directions with written directions. • Give one direction at a time. Quietly repeat directions to the student after they have been given to the rest of the class. Check for understanding by having the student repeat the directions. • Place general methods of operation and expectations on charts displayed around the room and/or on sheets to be included in student's notebook.
Difficulty prioritizing from most to least important	• Prioritize assignments and activities. • Provide a model to help students. Post the model and refer to it often.
Difficulty sustaining effort and accuracy over time	• Reduce assignment length and strive for quality (rather than quantity). • Increase the frequency of positive reinforcement (catch the student doing it right and let him know it).
Difficulty completing assignments	• List and/or post (and say) all steps necessary to complete each assignment. • Reduce the assignment into manageable sections with specific due dates. • Make frequent checks for work/assignment completion. • Arrange for the student to have a "study buddy" with phone number in each subject area.
Difficulty with any task that requires memory	• Combine seeing, saying, writing and doing, student may need to subvocalize to remember. • Teach memory techniques as a study strategy (e.g., mnemonics, visualization, oral rehearsal, numerous repetitions).
Difficulty with test taking	• Allow extra time for resting, teach test-taking skills and strategies, and allow student to be tested orally. • Use clear, readable and uncluttered test forms. Use test format that the student is most comfortable with. Allow ample space for student response. Consider having lined answer spaces for essay or short answer questions.
Confusion from non-verbal cues (misreads body language, etc.)	• Directly teach (tell the student) what nonverbal cues mean. Model and have student practice reading cues in a safe setting.
Confusion from written material (difficulty finding main idea from a paragraph, attributes greater importance to minor details)	• Provide student with copy of reading material with main ideas underlined or highlighted. • Provide on outline of important points from reading material. • Teach outlining, main idea/details concepts. • Provide tape of text/chapter.

AREA OF CONCERN	ACCOMMODATIONS
Confusion from spoken material, lectures and audio-visual material (difficulty finding main idea from presentation, attributes greater importance to minor details)	• Provide student with a copy of presentation notes. • Allow peers to share notes from presentation (have student compare own notes with copy of peer's notes). • Provide framed outlines of presentations (introducing visual and auditory cues to important information). • Encourage use of tape recorder. • Teach and emphasize key words (the following..., the most important point..., etc.).
Difficulty sustaining attention to tasks or other activities (easily distracted by extraneous stimuli)	• Reward attention. Break up activities into small units. Reward for timely accomplishments. • Use physical proximity and touch. Use earphones and/or study carrels, quiet place, or preferential seating.
Frequent messiness or sloppiness	• Teach organizational skills. Be sure student has daily, weekly and/or monthly assignment sheets, list of materials needed daily, and consistent format for papers. Have a consistent way for students to turn in and receive back papers, reduce distractions. • Give reward points for notebook checks and proper paper format. • Provide clear copies of worksheets and handouts and consistent format for worksheets. Establish a daily routine, provide for what you want the student to do. • Arrange for a peer who will help with organization. • Assist student to keep materials in a specific place (e.g., pencils and pens in pouch). • Be willing to repeat expectations.
Poor handwriting (often mixing cursive and manuscript and capitals with lower-case letters)	• Allow for a scribe and grade for content, not handwriting. Allow for use of a computer or typewriter. • Consider alternative methods for student response (e.g., tape recorder, oral reports, etc.) • Don't penalize student for mixing cursive and manuscript (accept any method of production).
Difficulty with fluency in handwriting (e.g., good letter/word production but very slow and laborious)	• Allow for shorter assignments (quality vs. quantity). • Allow alternate method of production (computer, scribe, oral presentation, etc.)
Poorly developed study skills	• Teach study skills specific to the subject area - organization (e.g., assignment calendar), textbook reading, note taking (finding main idea/detail, mapping, outlining, skimming, summarizing).
Poor self-monitoring (careless errors in spelling, arithmetic, reading)	• Teach specific methods of self-monitoring (e.g., *Stop-Look-Listen*). • Have student proofread work when it is cold.
Low fluency or production of written material (takes hours on a 10 minute assignment)	• Allow for alternative method for completing assignment (oral presentation, taped report, visual presentation, graphs, maps, pictures, etc.) with reduced written requirements. • Allow for alternative method of writing (e.g., typewriter, computer, cursive or printing, or a scribe).

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AREA OF CONCERN	ACCOMMODATIONS
Apparent inattention (underactive, daydreaming, not there)	• Get student's attention before giving directions, tell student how to pay attention, (*Look at me while I talk; watch my eyes while I speak.*) Ask student to repeat directions. • Attempt to *actively* involve student in lesson (e.g., cooperative learning).
Difficulty participating in class without being interruptive, difficulty working quietly	• Seat student in close proximity to the teacher. • Reward appropriate behavior (catch student "being good"). • Use study carrel if appropriate.
Inappropriate seeking of attention (clowns around, exhibits loud excessive or exaggerated movement as attention-seeking behavior, interrupts, butts into other children's activities, needles others)	• Show student (model) how to gain other's attention appropriately. • Catch the student when appropriate and reinforce.
Frequent excessive talking	• Teach student hand signals and use to tell student when and when not to talk. • Make sure student is called upon when it is appropriate and reinforce listening.
Difficulty making transitions (from activity to activity or class to class); takes an excessive amount of time to "find pencil," gives up, refuses to leave previous task; appears agitated during change	• Program student for transitions. Give advance warning of when a transition is going to take place (*Now we are completing the worksheet, next we will*) and the expectations for the transition (*and you will need*). • Specifically say and display lists of materials needed until a routine is possible. List steps necessary to complete each assignment. • Have specific locations for all materials (pencil pouches, tabs in notebooks, etc.). • Arrange for an organized helper (peer).
Difficulty remaining seated or in a particular position when required to	• Give student frequent opportunities to get up and move around. Allow space for movement.
Frequent fidgeting with hands, feet or objects; squirming in seat	• Break tasks down to small increments and give frequent positive reinforcement for accomplishments (this type of behavior is often due to frustration). • Allow alternative movement when possible.
Inappropriate responses in class often blurted out; answers given to questions before they have been completed	• Seat student in close proximity to teacher so that visual and physical monitoring of student behavior can be done by the teacher. • State behavior that you do want (tell the student how you expect him to behave).
Agitation under pressure and competition (athletic or academic)	• Stress effort and enjoyment for self, rather than competition with others. • Minimize timed activities; structure class for team effort and cooperation.
Inappropriate behaviors in a team or large group sport or athletic activity (difficulty waiting turn in games or group situations)	• Give the student a responsible job (e.g., team captain, care and distribution of the balls, scorekeeping, etc.); consider leadership role. • Have student in close proximity to teacher.

AREA OF CONCERN	ACCOMMODATIONS
Frequent involvement in physically dangerous activities without considering possible consequences	• Anticipate dangerous situations and plan for in advance. • Stress *Stop-Look-Listen* • Pair with responsible peer. (Rotate responsible students so that they don't wear out!)
Poor adult interactions Defies authority Sucks up Hangs on	• Provide positive attention. • Talk with student individually about the inappropriate behavior (*What you are doing is ..., A better way of getting what you need or want is...).*
Frequent self-putdowns, poor personal care and posture, negative comments about self and others, low self-esteem	• Structure for success. • Train student for self-monitoring, reinforce improvements, teach self-questioning strategies (*What am I doing? How is that going to affect others?*) • Allow opportunities for the student to show his strength. • Give positive recognition.
Difficulty using unstructured time - recess, hallways, lunchroom, locker room, library, assembly	• Provide student with a definite purpose during unstructured activities (*The purpose of going to the library is to check out ..., the purpose of... is...*). • Encourage group games and participation (organized school clubs and activities).
Losing things necessary for task or activities at school or at home (e.g., pencils, books, assignments before, during and after completion of a given task)	• Help student organize. Frequently monitor notebook and dividers, pencil pouch, locker, book bag, desks. *A place for everything and everything in its place.* • Provide positive reinforcement for good organization. Provide student with a list of needed materials and their locations.
Poor use of time (sitting, staring off into space, doodling, not working on task at hand)	• Teach reminder cues (a gentle touch on the shoulder, hand signal, etc.). • Tell the student your expectation of what paying attention looks like (You look like you are paying attention when...). • Give the student a time limit for a small unit of work with positive reinforcement for accurate completion. • Use a contract, timer, etc., for self-monitoring.

Resources:
Anchorage School District - *Attention Deficit Disorders, Suggested Classroom Accommodations for Specific Behaviors*

Section 504/ADA Policy/Procedures Checklist

Does your school district provide, via policy or procedures, for:		YES	NO
1. a.	Continuing ADA/Section 504 public notice that your district does not discriminate on the basis of disability with regard to admission or access to and treatment or employment in your programs and activities?	_____	_____
1. b.	Continuing internal notice (i.e., to staff and students) to the same effect? (See CFR Sec. 104.8 and 104.32 (b), 28 CFR 35.106)	_____	_____
2.	Identification in those notices of Sec. 504/ADA coordinator? (See 34 CFR Sec. 104.7(a) and 104.8, 28 CFR 35.107(a)	_____	_____
3.	A grievance procedure for disability discrimination complaints that: a) incorporates appropriate due process standards? b) provides for the prompt and equitable resolution of those complaints? (See 34 CFR Sec. 104.7(b), 28 CFR 35.107	_____ _____	_____ _____
4.	Reasonable accommodation for employees with disabilities, such as each of the following unless it demonstrably would impose an "undue hardship" on the operation of the program:		
	a. accommodations readily accessible to and usable by persons with disabilities ?	_____	_____
	b. job restructuring and part-time or modified work schedules?	_____	_____
	c. acquisition or modification of equipment or devise?	_____	_____
	d. provision of readers or interpreters and other similar actions? (See 34 CFR Sec. 104.12, 28 CFR 35.160)	_____	_____
5.	Not using employment tests or other selection criteria that tend to screen out persons with disabilities unless these criteria are demonstrably job related and unless effective alternatives are not available? (See 34 CFR Sec. 104.13(a)29 CFR Sec. 1630.10, Sec. 1630.13)	_____	_____
6.	Not making pre employment inquiries as to whether the applicant has a disability? See 34 CFR Sec. 104.14(a) 29 CRF Sec. 1630.13	_____	_____

		YES	NO
7.	Ready accessibility for persons with disabilities to each of your programs and activities when viewed in its entirety?	_____	_____
8.	An individualized evaluation (in the native language) for any student who is believed to, (a) have a physical or mental impairment which substantially limits one or more major life activity, (b) have a record of such impairment, or (c) be regarded as having such an impairment? (See 34 CFR Sec. 104.35 and 104.3(j)	_____	_____
9.	For each student meeting any of the criteria in item #8, an appropriate education, which is defined as regular or special education and related aids and services that are designed to meet his/her individual needs as adequately as the needs of nondisabled persons are met and that are based upon procedures referred to in item #10? (See 34 CFR Sec. 104.33)	_____	_____
10.	Parental notice (in the native language) of the rights to:	_____	_____
	a) have an individualized evaluation (item #8)?	_____	_____
	b) examine relevant records?	_____	_____
	c) demand an impartial hearing with the opportunity to be represented by counsel?	_____	_____
	d) obtain a subsequent review? (See 34 CFR Sec. 104.36)	_____	_____
11.	When there are separate classrooms for special education, that these be comparable facilities to those for regular education? (See 34 CFR Sec. 104.34{c})	_____	_____
12.	Nonacademic and extracurricular services and activities so as to provide persons with disabilities with an equal opportunity for participation? (See 34 CFR Sec. 104.37)	_____	_____
13.	Reasonable access to your programs or activities, if any, of: a) preschool education?	_____	_____
	b) day care?	_____	_____
	c) adult education? (See 34 CFR Sec 104.38)	_____	_____
14.	Integrated settings to the maximum extent appropriate to the needs of qualified individuals with disabilities? (see 34 CFR Sec. 104.34; 28 CFR Sec. 35.130(d)	_____	_____

		YES	NO
15.	Meaningful access for <u>parents with disabilities</u> to school-initiated activities in addition to the academic and/or disciplinary aspects of their child's education?	_____	_____
16.	Furnishing auxiliary aids and services to employees, students, parents, and members of the public who have disabilities to the extent necessary for communications with them to be equally effective as communications with other persons, such as:		
	a) telephone communications devices for the deaf (TDDs)?, or	_____	_____
	b) signage with international symbol for accessibility?	_____	_____
	unless it would result in an undue burden or a fundamental alteration in the program. (See 28 CFR Sec. 35.160-35.164)		
17.	Reasonable modifications generally in policies, practices, and procedures when necessary to avoid disability-based discrimination unless the district can prove that the modification would fundamentally alter the nature of the service, program or activity. (See 28 CFR Sec. 35.130 (b)(7)	_____	_____
	Does your district have on file an ADA self-evaluation? (See 28 CFR 35 105)	_____	_____
	Does your district have an ADA Transition Plan? (See 28 CFR 35.15(d)	_____	_____

Provided by Perry Zirkel, Lehigh University, Bethlehem, Pa.

SUGGESTIONS FOR PUBLIC SCHOOL EDUCATORS

1. Always make certain that the basis for OCR's interest in the agency is absolutely clear. It is appropriate to insist on a written explanation of the regulatory authority for OCR's proposed activities.

2. Request that OCR specify and describe in regulatory terms the specific issues it is looking into and get it established that OCR's activities will be limited to those issues. Otherwise, a simple complaint investigation could turn into a overall compliance review visit.

3. Prior to appropriate OCR activity, request a copy of the investigative procedures to be used by OCR to conduct the proposed activity and the process for collecting and analyzing data as well as the methods used to communicate findings and resolve disputes.

4. Always formally ask for technical assistance before a problem is suspected or immediately upon identification of problem.

5. Attempt to resolve disputes. OCR has a good track record of negotiating resolution of findings. BUT, make certain that the agreed upon remedy is in fact required and/or desirable. It is important to know the law and regulations and to make certain that the remedy is in the interest of the students affected and the agency.

6. Determine if the issues being dealt with are matters of well established case law or if they are new applications of Section 504. If they are new, be mindful that there is an interest on the part of OCR to establish sound and workable policy. Negotiations and agreements should be entered with the realization that the remedy might have a significant impact well beyond the specific agency.

7. Understand how OCR is organized and be clear if an activity is being handled at the Regional Office level solely, or is also being considered at the central office in Washington, DC. Issues requiring action or review on the part of the central office imply greater significance. If there is central office participation in the process, it may be appropriate to involve organizations representing agency interests such as the American Association School Administrators, National Association of State Directors of Special Education, Inc., Counsel of Administrators of Special Education Inc., etc., because of the potential broad implications for setting national policy by OCR.

8. Become familiar with Section 504 and IDEA-B, especially in the following areas:

Equal Treatment - Section 504 requires that persons with disabilities be protected in the educational decision making process through adherence to procedures which are different from those afforded persons without disabilities. Keep in mind the standard established in discipline cases which requires the application of procedural safeguards when making decisions regarding a student's behavior when the student has even just a Section 504 disability.

Appropriate Education - Be certain that the student is being afforded appropriate education which can involve regular or special education, or related aids and services. Establish a clear standard for what constitutes meaningful educational benefit for any student receiving educational services form the agency. Also, remember that denial of access to any program operated by the agency (including extracurricular and non-academic activities) of an "otherwise qualified" person with a disability is prohibited, and the agency might be required to make reasonable accommodations to ensure access (e.g., adaptive devices, distribution of medication, removal of physical barriers).

Person with a Disability - Persons with disabilities under Section 504 comprise a larger percentage of the population than those eligible under the IDEA special education requirements. Remember that determination of the disability under Section 504 requires an adequate information collection and appropriate evaluation process.

DEFINITIONS FOR PUBLIC SCHOOLS

Meaningful Education Benefit - The term "meaningful educational benefit" means:

1. for a student who has never been enrolled in a public or private elementary school, performance at or not substantially below expected developmental levels for a student of the same age;

2. for a student who is currently enrolled in a public or private elementary or secondary school but not receiving special education and related services, performance at or not substantially below expected competencies established for grade and/or age level (or other educational standards including progress through a curriculum or promotion from grade to grade); or

3. for a student who is currently receiving special education and related services, substantial progress toward the attainment of the goals in the IEP, as evidenced by the accomplishment of at least a majority of the short-term instructional objectives established in each goal area.

IDEA Eligible Student - An eligible student is a person of age three through twenty-one who:

1. Has a physical or mental impairment, as set forth in the IDEA-B regulations;

2. Does not achieve education satisfactorily due to a significant physical or mental impairment; and

3. Because of (1) and (2) above needs special education.

Section 504 Qualified Student with a Disability: A qualified student with a disability is a school age student who:

1. Has a physical or mental impairment which significantly limits participation in one or more major life activities;

2. Does not achieve education satisfactorily due to a significant physical or mental impairment which significantly limits participation in one or more of major life activities *(not receiving meaningful educational benefit);* and

3. Requires the provision of a multidisciplinary evaluation, a supplementary service or aid, a related service, or some other accommodation to receive an appropriate education.

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